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5/14/04

Anne Berube/DC/USEPA/US

05/14/2004 10:45 AM

To: Connie Puchalski/R5/USEPA/US@EPA

 cc: Alan Carpien/DC/USEPA/US@EPA, Benjamin  
 Lammie/DC/USEPA/US@EPA, Clarence  
 Featherson/DC/USEPA/US@EPA, Thomas  
 Turner/R5/USEPA/US@EPA

bcc

Subject: Re: Fw: oaz...

Ben, Clarence, and I are comfortable with DOJ Defense's suggested language. (Alan's out of the office today.) We think even with the "if any," Blue Tee should be able to get into court. Also, we think that Option 1 may be more palatable to Blue Tee than Option 2 b/c the reference to Section 113 is not limited to 113(f)(3)(B).

Are you going to forward this to Blue Tee today?

Connie Puchalski

Connie Puchalski

05/14/2004 10:04 AM

 To: Benjamin Lammie/DC/USEPA/US@EPA, Alan  
 Carpien/DC/USEPA/US@EPA, Thomas Turner/R5/USEPA/US@EPA,  
 Clarence Featherson/DC/USEPA/US@EPA, Anne  
 Berube/DC/USEPA/US@EPA

cc:

Subject: Fw: oaz...

Here is suggested language from DOJ Defense. The "if any" will upset Blue Tee. I guess we can say this language or nothing to Blue Tee. Can you all let me know your views on this language as soon as possible? Thanks, Connie

— Forwarded by Connie Puchalski/R5/USEPA/US on 05/14/2004 09:02 AM —


 "Schachter, Scott (ENRD)"  
 <Scott.Schachter@usdoj.gov>  
 >

To

Subject: oaz...

05/13/2004 07:15 PM

connie.

john cruden is comfortable sharing the following language with epa oeca. this language would be offered to blue tee, along with gsa remaining involved in the settlement now, with gsa funding part of the work and epa costs as presently contemplated in the aoc and side agreement. it would also be pitched to blue tee as as far as we can go on the issue on blue tee's contribution rights against third parties,

and an alternate to a unilateral work order. i am out of the office tomorrow, friday, and back in the office on monday. please share this with oeca and let's discuss on monday.

option 1 -- Nothing in this Consent Order effects the Respondents' rights, if any, to assert claims, causes of action, or demands against any person not a party to this Consent Order for cost recovery, indemnification, or contribution under section 113 of CERCLA, 42 U.S.C. sec. 9613, or state law.

the key point here, in exchange for referencing section 113 at all, is the phrase "if any." internally in the federal family we need to be clear that our view of the law means that blue tee has no contribution rights as a result of this administrative work settlement. this formulation allows to to say in the future, if asked, that there are no such rights because of 113(g)(3). we will not be able to have a meeting of the minds on this issue with blue tee if it insists that we either agree it has contribution rights or that we simply say blue tee gets what it gets under the statute. we are not willing to imply that such rights exist, or diminish our

ability to say that no such rights exist in this context. if blue tee's bottom line on this issue is to include citation to 113(f)(3)(B), then as option 2 we could substitute a citation to section 113(f)(3)(B) for merely "section 113." but again, the phrase "if any" would be required, so as not to narrow or effect our ability to argue that 113(g)(3) diminishes the contribution rights that 113(f)(3)(B) apparently gives.

look forward to talking to you on monday.

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